

**EXHIBIT 7**

**REDACTED VERSION  
OF DOCUMENT  
SOUGHT TO BE SEALED**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

Case No.

UBER TECHNOLOGIES, INC.;

3:17-cv-00939-WHA

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

\_\_\_\_\_ /

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MATHEW HENLEY

FRIDAY, DECEMBER 22, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2771361B

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1 he's identified in the preceding paragraph.

13:55:09

2 Do you recall having any conversations

3 with Mr. Jacobs where he complained about any

4 practice by the threat operations team at all?

5 A. No.

13:55:24

6 Q. So whether it was ephemeral communications

7 or anything, you have no recollection of him

8 complaining about whether it was proper for threat

9 operations to engage in any type of investigative

10 activity; is that correct?

13:55:38

11 A. I don't have any recollection of him

12 complaining about illegal practices at all.

13 Q. And do you have any recollection of him

14 complaining about any practice, whether it was legal

15 or illegal?

13:55:54

16 A. He complained about being inhibited in his

17 ability to do certain things, but not complaining

18 about, in general, the practices of the team.

19 Q. So as far as your experience with him, you

20 have no recollection of an instance where he

13:56:13

21 complained and said to you that the team is engaging

22 in some type of behavior that I think is improper?

23 A. Yeah, I have never heard that before from

24 him.

25 Q. Did he ever express any concern to you

13:56:28

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1 about the use of ephemeral communications?

13:56:30

2 A. He never -- never once.

3 Q. Did he ever express any concern to you

4 about the use of non-attributable devices?

5 A. Again, we wouldn't have used that term. I

13:56:44

6 believe -- Ric's -- I'm not going to go down that

7 path --

8 Q. Well, I --

9 A. If I can finish it, we never discussed him

10 having concerns about our research laptops ever.

13:56:54

11 Q. Okay. So just a few moments ago, your

12 counsel asked you some questions -- or, excuse me,

13 Uber's counsel asked you some questions about the

14 term "non-attributable devices" and you answered the

15 question, you didn't have any trouble with the term.

13:57:05

16 So if I -- I'd just ask for the same

17 courtesy, that if I use a term that you've used in

18 your communication with her and she's used the term

19 "non-attributable devices" and you understood what

20 she meant and you answered the question, then to

13:57:17

21 move this along, you can treat me the same way.

22 Okay? Does that seem fair?

23 A. I understand that. When you bury certain

24 things in your questions is when I have issues.

25 Q. My question to you is, did he ever express

13:57:36

Page 13

1 any concern to you about the use of non-attributable  
2 devices?

13:57:38

3 A. No.

4 Q. Did Mr. Jacobs ever express any concern to  
5 you about the improper use of "attorney-client  
6 privilege" on any document?

13:57:51

7 A. No, not to my knowledge.

8 Q. Did Mr. Jacobs ever express any concern to  
9 you about the use of the designation "draft" on any  
10 document?

13:58:08

11 A. No, not to my knowledge.

12 Q. Did he ever express any concern to you  
13 about his belief that Uber was engaging in the theft  
14 of trade secrets?

15 A. Definitely never, to my knowledge.

13:58:19

16 Q. Did he ever express any concern to you  
17 that Uber was trying to avoid its discovery  
18 obligations in civil litigation?

19 A. No.

20 Q. Did he ever express any concern to you  
21 about any unethical or illegal practice of any kind?

13:58:34

22 A. No.

23 Q. Looking at the second paragraph -- excuse  
24 me -- that second paragraph of this e-mail, the  
25 next-to-last sentence of that paragraph says, "For

13:59:07

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1 BY MR. LYONS:

15:29:25

2 Q. Okay. Are you aware of anyone in  
3 ThreatOps ever responding to any discovery requests?  
4 Because you yourself haven't, so --

5 A. Yeah, I mean, we -- we get the letter and  
6 we acknowledge it. And it goes back to our lawyers  
7 that we've acknowledged that we won't destroy things  
8 based on a claim.

15:29:31

9 Q. Okay. That's a letter -- we'll call that  
10 a document hold letter, saying hold on to stuff.

15:29:49

11 Now, have you ever received any request to  
12 give me something?

13 A. No.

14 Q. So --

15 A. Not that I can think of.

15:29:57

16 Q. So have you ever had to search for any  
17 documents pursuant to any requests by a lawyer?

18 A. That's all handled by our eDiscovery and  
19 IT staff, right, who has access to all of your  
20 machines.

15:30:13

21 Q. So the answer would be, to your knowledge,  
22 you have not?

23 A. Yeah.

24 Q. So Mr. Jacobs makes some allegations here.  
25 We're looking at that paragraph that said that Uber

15:30:27

1 had "efforts to evade current and future discovery  
2 requests, court orders and government  
3 investigations."

15:30:33

4 Was that true or not true?

5 A. Again, that's a very long sentence here.

15:30:49

6 No, there were -- there was no concerted effort to  
7 lead any sort of concealment. It was -- anything  
8 that we did was around securing either the people  
9 working on the research themselves or protecting the  
10 data from future theft or abuse, but nothing around  
11 evading or any of that.

15:31:12

12 Q. Did Mr. Jacobs ever advocate for a secure  
13 and encrypted centralized database?

14 A. Yes.

15 Q. Was that ever done?

15:31:26

16 A. It was passed through to our engineering  
17 team for scoping requirements on what it would take  
18 to get it built. It was -- ultimately did not make  
19 the prioritization cut for that half. So the  
20 company, as you can imagine, has a set number of  
21 engineering resources. Set number of projects get  
22 submitted as they do their planning for the year.  
23 And they draw a line, and our line was -- our  
24 project was below that line.

15:31:49

25 Q. So Mr. Jacobs did advocate for a secure

15:32:06

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1 and encrypted centralized database, that's true; 15:32:09

2 correct?

3 A. That's true, yeah.

4 Q. And his request for that was denied; is

5 that true? 15:32:18

6 A. By the engineering department.

7 Q. Did you approve his request?

8 A. Yeah.

9 Q. Now, he says, "discussions broke down" --  
10 going to the last paragraph on that page, that "He 15:32:35

11 presented draft proposals to managers Henley and  
12 Clark."

13 Did you see any proposals from him  
14 regarding a centralized database?

15 A. Well, of course. We had pushed them 15:32:47  
16 forward to engineering.

17 Q. And he says, "However, discussions broke  
18 down immediately because they objected to preserving  
19 any intelligence that would make preservation and  
20 legal discovery a simple process for future 15:32:58  
21 litigants."

22 I assume you think that's not a true  
23 statement.

24 A. That's not a true statement or we would  
25 not have pushed it forward to engineering for 15:33:07



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1     scoping.

15:33:10

2           Q.    Do you recall the Ergo investigation  
3    coming up in any of your conversations with  
4    Mr. Jacobs?

5           A.    You know, it came up in different  
6    trainings of kind of what not to do, so I'm sure it  
7    came up in conversations.

15:33:57

8           Q.    Do you ever recall Mr. Clark saying that  
9    he did not want to repeat the errors of the Ergo  
10   investigation?

15:34:15

11          A.    I can see him saying that, yes.  I don't  
12   recall it, but . . .

13          Q.    Did you ever say that you did not want to  
14   repeat the errors of the Ergo investigation?

15          A.    I don't recall saying that.

15:34:25

16          Q.    Let me ask you to turn to page 13.  This  
17   paragraph -- there's a paragraph on this page that  
18   deals with Waymo.

19                Do you see that?

20          A.    I do see that.

15:35:21

21          Q.    So I want you to take a moment and read  
22   that to yourself, the first paragraph, and let me  
23   know when you're finished.

24          A.    All right.

25                (Witness reviews document.)

15:35:33

1 with the definition on specifically.

16:45:33

2 Q. Well, do you have a concern or belief that  
3 there was some type of information of Waymo's that  
4 was uncovered? Because I can just work backwards.

5 Why don't you tell me all the information  
6 related to Waymo that you believe was uncovered as a  
7 result of these efforts.

16:45:55

8 A. All of our efforts against Waymo that I'm  
9 aware of occurred in public space.

10 Q. And when you say "public space," you're  
11 referring to surveillance?

16:46:12

12 A. Yeah, observation.

13 Q. So observation of vehicles?

14 A. Yes.

15 Q. And so you're not aware of any other  
16 research activity or surveillance or investigative  
17 tool that was utilized against Waymo other than this  
18 physical surveillance of vehicles; is that correct?

16:46:19

19 A. Yeah.

20 Q. So anything that you observed would have  
21 been the observation of these vehicles in the public  
22 space?

16:46:32

23 A. Yes, driving around.

24 Q. And based on that, are you aware of having  
25 discovered any trade secrets of Waymo?

16:46:43

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1     guessing he was. But those are really the -- those     16:53:28  
2     were the two that I knew.

3             Q.     You're not aware of anyone else?

4             A.     No. We didn't work with them routinely.

5             Q.     So I'm going to show you a video. I'm     16:54:04  
6     going to ask you some questions about it.

7             A.     Okay.

8             Q.     So just take a second to get this set up.

9             MR. LYONS: So I'm going -- I'll identify this  
10     document for the record. The Bates number is     16:54:33  
11     UBER00336963.mp4.

12     BY MR. LYONS:

13             Q.     So I'm going to place this computer in  
14     front of you. And then you can start it by pressing  
15     the space bar, I believe, and then --     16:54:51

16             THE REPORTER: Can I ask you what the procedure  
17     is for the record.

18             MR. LYONS: Just say, "Video played."

19             THE REPORTER: Thank you.

20             (Video played.)     16:55:16

21     BY MR. LYONS:

22             Q.     So are you able to identify any of the  
23     voices on that document [sic]?

24             A.     Yes.

25             Q.     And whose voices do you recognize?     16:56:15

1 A. Jake Nocon and myself. 16:56:18

2 Q. And so do you recall what you said, if  
3 anything, on that video?

4 A. Yeah. I believe that Jake's question was,  
5 is there anything to this Google lawsuit or is it 16:56:33  
6 them just trying to screw with us?

7 And I think I answered something along the  
8 lines, I think they're just trying to screw with us.  
9 There may be something with Anthony. And I said, I  
10 hope this audio doesn't leave the car. 16:56:54

11 And then he said, no, recordings are off.  
12 And then he said, oh, wait, no, it's not, and then  
13 turned it off.

14 Q. So what were you referring to then with  
15 regard to the Anthony stuff? 16:57:05

16 A. Purely what I had read in the press. You  
17 know, I don't know the dates of when this was going  
18 on. You know, there was the battle between Anthony  
19 himself. I had no personal knowledge of this case  
20 really at all up until two weeks ago. And so 16:57:28  
21 whatever it was, it felt like it wasn't something  
22 that was massive, but more of a war with Anthony.  
23 And so that's what I meant.

24 Q. What was your concern about anything you  
25 said leaving the car? 16:57:48

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1 into the observation assignments, to get them that  
2 data.

17:20:46

3 Q. Under B, it says, "Key personnel provide  
4 insight into a program's direction, capabilities and  
5 weaknesses. It also allows ATG to maintain  
6 situational awareness of skilled and experienced  
7 individuals who may become available as competitors  
8 tweak their rosters in order to right size their  
9 efforts."

17:21:16

10 Do you see that?

17:21:29

11 A. Yes, I do.

12 Q. What was SSG's role with regard to key  
13 personnel, if any?

14 A. This was in support of the recruiting  
15 team's sourcing. Might be a word that's just used  
16 by companies, but the sourcing component of a  
17 recruiting house is finding high-quality candidates  
18 for open positions that you might want to go after.  
19 And so they were looking for open source research  
20 into, you know, who were the senior engineers making  
21 up different aspects of different programs at  
22 different companies.

17:21:41

23 Q. And then there's reference to priority of  
24 effort. Is Google, [REDACTED] and  
25 others -- do you recall that being the order of

17:22:01

17:22:50

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1 priority that SSG was instructed to follow?

17:22:56

2 A. That would have been the priority list  
3 given to us by Lior.

4 Q. What does "Supply chain members are  
5 chatty" refer to?

17:23:14

6 A. I don't know. That would have been a Lior  
7 thing, and it doesn't ring a bell to me. I was  
8 looking at that as I was reading. I don't know. I  
9 know what supply chain is, but . . .

10 MR. LYONS: Let's mark this as next in order.

17:24:03

11 (Plaintiff's Exhibit 9794 was marked.)

12 BY MR. LYONS:

13 Q. This e-mail refers to a criminal  
14 investigation into greyballing.

15 Are you familiar with that term?

17:24:35

16 A. I do know the term "greyballing."

17 Q. How did you become familiar with it?

18 A. I believe I first heard it from our fraud  
19 team. Not a system that my teams used. Minimal  
20 hallway conversation sort of stuff.

17:24:59

21 MS. CHANG: Objection; outside the scope of the  
22 subject matter that was ordered by the court in this  
23 phase of supplemental discovery. I'll allow some  
24 limited questioning, but at some point, I'm going to  
25 instruct him not to answer.

17:25:19

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1 advice?

17:44:27

2 A. I'm definitely not an expert in the  
3 nuances of this stuff, but if I were looking at this  
4 one and was being asked, I would have a hard time  
5 figuring out where that one would be asking for  
6 legal advice.

17:44:39

7 Q. Do you recall receiving any instructions  
8 by anyone to mark a document as attorney-client  
9 privilege to avoid the document being discovered?

10 A. No.

17:45:22

11 Q. Do you have the presentation in front of  
12 you?

13 A. I do.

14 Q. Can you turn to Bates number stamp 0326.

15 A. Um-hum.

17:45:59

16 Q. You'll see the reference to "best  
17 practices" there.

18 A. Um-hum.

19 Q. Do you know what -- those are best  
20 practices of what?

17:46:10

21 A. I don't know. I mean, I need to --  
22 they're kind of -- I can speculate on some of them.  
23 I'm not sure. It's not a communication flow,  
24 necessarily. There's different things out of it.  
25 I'm guessing these are talking points that Craig

17:46:39

FEDERAL CERTIFICATE OF DEPOSITION OFFICER

I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby  
declare:

That, prior to being examined, the witness  
named in the foregoing deposition was by me duly  
sworn pursuant to Section 30(f)(1) of the Federal  
Rules of Civil Procedure and the deposition is a  
true record of the testimony given by the witness;

That said deposition was taken down by me in  
shorthand at the time and place therein named and  
thereafter reduced to text under my direction;

--X-- That the witness was requested to  
review the transcript and make any changes to the  
transcript as a result of that review pursuant to  
Section 30(e) of the Federal Rules of Civil  
Procedure;

----- No changes have been provided by the  
witness during the period allowed;

----- The changes made by the witness are  
appended to the transcript;

----- No request was made that the  
transcript be reviewed pursuant to Section 30(e) of  
the Federal Rules of Civil Procedure.

I further declare that I have no interest in  
the event of the action.

I declare under penalty of perjury under the  
laws of the United States of America that the  
foregoing is true and correct.

WITNESS my hand this 26th day of December,  
2017.



ANRAE WIMBERLEY, CSR NO. 7778